In the High Court of Punjab and Haryana, Chandigarh.

R.S.A. No.666 of 1980

Date of Decision: 4.4.2007

Ranjit Singh & Another

…Appellants.

Versus

The Gram Sabha, Jalalpur, through Gram Panchayat, Jalalpur.

…Respondent.

CORAM: HON'BLE MR.JUSTICE M.M.KUMAR

Present: Mr.Aman Jain, Advocate
for the appellants.

None for the respondent.

JUDGMENT

M.M.KUMAR, J.

This is plaintiffs' appeal filed under Section 100 of Code of Civil Procedure, 1908 (hereinafter referred to as "Code") challenging the judgment & decree dated 2.2.1980 passed by learned Additional District Judge, Patiala (I), reversing the judgment & decree of the trial Court dated 4.9.1979. The dispute between the plaintiff-appellants and defendant-Gram Panchayat centres around the issue as to whether the plaintiff-appellants are owner in possession of "Sehan" along with "Barota" tree.

The controversy in brief is that the plaintiff-appellants filed a Civil Suit No.204 dated 6.6.1978 asserting that they are owner in possession of the

suit property along with the tree and the defendant-Gram Panchayat has no right, title or interest in it. It was alleged that the defendant-Gram Panchayat has been threatening the plaintiff-appellants to interfere with their peaceful possession over the suit land and the tree by raising a pucca construction (Chabutra) around the said tree and wish to claim title over the same. Despite the request made by the plaintiff-appellants not to interfere in their peaceful possession, the defendant-Gram Panchayat have been adamant which resulted in filing of the suit.

The stand of the defendant-Gram Panchayat is that in fact they have been owner and in possession of the suit property which is comprised in Khasra No.442. They have claimed that the pucca construction has to be raised by the defendant-Gram Panchayat in pursuance to its resolution dated 5.7.1974 and that the foundation for the said purpose have already been dug and earth has also been filled around the tree. It is claimed that the property in dispute is shamlat deh and the Civil Court would not have any jurisdiction in view of Section 13 of the Punjab Village Common Lands (Regulations) Act, 1961. It was also alleged that the suit was not maintainable as the plaintiff-appellants have not been in possession of the suit property.

The trial Court after examining the evidence on record placed reliance on the statements made by Sh.Yad Ram (PW.1), Sh.Sohan Lal (PW.3) and Ranjit Singh (PW.5), plaintiff-appellant himself. The trial Court also noticed jamabandi for the year 1974-75 (Ex.PW4/D) which is in respect of Khasra No.442 and also noticed Ex.D3 which pertains to Khasra No.361. It further noticed that the entry in jamabandi (Ex.PW4/D) shows that the land in dispute was “abadi deh” according to the column of ownership and cultivation. The land otherwise was described as “ghair mumkin gora deh”. In respect of Khasra No.361, name of one Sh.Kehar Singh son of Sh.Boota Singh was noticed in the column of ownership and the land was in self-cultivation. On

the basis of aforementioned evidence, in addition to others, the trial Court recorded the following findings:-

> "The Gram Panchayat is a body corporate and all the property vested in it is entered in the property register including the tree situated within its area. In the present case, the defendants have not placed on file any copy of the property register of the Gram Panchayat which may show that the Gram Panchayat is the owner of the site in dispute and the "Barota" tree in question. The entries from the revenue record placed on the file also does not prove that the suit property is vested in the Gram Panchayat and they are in possession thereof. On the other hand the report of the Local Commissioner reveals that the suit land is a 'Sehan' of the house of the plaintiff. From this evidence on file of the parties, I hold that the suit land is in possession of the plaintiffs. As regards ownership no documentary evidence has come on behalf of the plaintiffs. For the purposes of this suit, it is not necessary to determine who is in possession of the suit land and it is sufficient to determine as to who is in possession of the suit land as the suit has been filed only for permanent injunction. In view of the evidence discussed above, I hold that the plaintiff is in possession of the suit land. Issue No.1, therefore, is decided in favour of the plaintiffs".

The trial Court also held that the suit was maintainable and there was no bar to filing of suit under the Punjab Village Common Lands (Regulations) Act, 1961. Accordingly, the suit was decreed holding that the plaintiff-appellants along with the tree standing in land, which forms part of their "Sehan" in front of their houses, are in possession. It was also found that during the pendency of the suit, the defendant-Gram Panchayat has

raised a Chabutra in violation of the stay order which resulted in issuance of further direction to it to demolish the same within a period of 30 days from the date of the decree, failing which recourse to law was to be taken.

On appeal filed under Section 96 of the Code, the learned Additional District Judge, Patiala (I), re-examined the copies of the revenue record, namely, jamabandi for the year 1974-75 (Ex.P2) noticing that Khasra No.442 is shown as “abadi deh” and the land is described as “ghair mumkin gora deh”. It also recorded the finding that the plaintiff-appellants have not been shown to be the owner in possession of Khasra No.442. With regard to Khasra No.361, the learned Appellate Court noticed that one Sh.Kehar Singh son of Sh.Boota Singh has been shown to be owner in possession. Therefore, on the face of the documentary evidence which raises a presumption of truth under Section 44 of the Punjab Land Revenue Act, 1887, the Appellate Court held that no reliance could be placed on the statements of Sh.Yad Ram (PW.1), Sh.Sohan Lal (PW.3) and Ranjit Singh (PW.5), plaintiff-appellant. In para 7 of the judgment, the lower Appellate Court has observed as under:-

> “Ex.P.2 is the jamabandi for the year 1974-75 in which Khasra No.442 is shown as abadi deh. In the column No.8, it is mentioned that Khasra No.442 is Gair Mumkin Gora Deh. The jamabandi has presumption of truth and Ex.P.2 was produced by the respondents are not shown to be the owners or in possession of Khasra No.442. Jamabandi Ex.P.2 for the year 1974-75 has been produced regarding Khasra No.361 which is shown in the ownership and possession of one Kehar Singh son of Buta Singh. In the face of this documentary evidence, no reliance can be placed on the statement of PW.1 Yad Ram, PW.3 Sohan Lal and PW.5 the plaintiff-respondent. The Patwari enters the khasra

girdawari of all the land mentioned in the revenue record and having khasra numbers. The patwari of the village must be making the entry regarding khasra No.442, also and if the respondents were in possession of the same and were so entered in the revenue record, they would definitely have produced the copies of the khasra girdawari which they have failed to do. A strong presumption arises against them. In his statement even the plaintiff-respondent has admitted Chabutra has been constructed by the Panchayat. The appellant had produced Mehma Singh Sarpanch as DW.1 Mohinder Singh, Jagir Singh, Naib Singh and Swaran Singh as DW5, who have all stated that the Panchayat is the owner of the site in dispute and the tree. They have also stated that there is a street in front of the house of the respondents and the limit of their house ends with the street. It was also stated by them that this site was used by residents of the village, who sit on the Chabutra and in the shade of the tree. In view of the discussion above, I hold that the respondents have failed to prove their ownership or possession over the site in dispute. The findings of the trial Court on issue No.1 are reversed and the issue is decided against the respondents".

Mr.Aman Jain, learned counsel for the plaintiff-appellants has vehemently argued that the learned Appellate Court has committed grave error in law by discarding the statements of Sh.Yad Ram (PW.1), Sh.Sohan Lal (PW.3) and Ranjit Singh (PW.5), plaintiff-appellant. According to the learned counsel, the defendant-Gram Panchayat failed to produce any evidence on record to establish that they were owner in possession of the suit land nor there is any evidence on record to show that the land was "shamlat

deh". However, learned counsel has not been able to frame any question of law much less substantial question of law which is sine qua non for entertaining an appeal by this Court as per requirement of Section 100 of the Code.

No-one has put in appearance on behalf of the defendant-Gram Panchayat.

After hearing learned counsel for the appellant, I am of the considered view that no interference of this Court in the findings of fact recorded by learned Additional District Judge would be called for because the plaintiff-appellants have not been able to prove that they are owner in possession of the suit land along with the tree. The learned Additional District Judge has rightly raised a presumption in favour of the entries made in the jamabandi for the year 1974-75 (Ex.P2) which show that Khasra No.442 is "abadi deh" and in column No.8 it is mentioned that the land is "ghair mumkin gora deh". It is, thus, evident that the plaintiff-appellants have not been shown to be owner in possession of land comprised in Khasra No.442 which is the land in dispute along with the tree. It is well settled that statutory presumption of correctness is attached to record of rights and jamabandies under Section 44 of the Punjab Land Revenue Act, 1887 as has been held by Hon'ble the Supreme Court in the case of **"Chote Khan v. Mal Khan" AIR 1954 SC 575**, **"Gurcharan Singh v. Prithi Singh" (1974)1 Supreme Court Cases 138** and **"Harish Chander v. Ghisa Ram" (1981)1 Supreme Court Cases 431.**

Moreover, question of possession is essentially a question of fact which cannot be interfered by this Court by re-appreciating evidence and reaching a conclusion different than the one reached by the Courts below. In that regard reliance may be placed on a judgment of Hon'ble the Supreme

Court in the case of **"Mohan Lal v. Nihal Singh" (2001)8 Supreme Court Cases 584.** I am further of the view that the documentary evidence in the form of record of right cannot be displaced by making self-serving oral statement. Therefore, I do not find any reason to over turn the findings recorded by the learned Additional District Judge holding that the plaintiff-appellants have not been able to prove their ownership or possession over the site in dispute. Even otherwise, the interference of this Court would be unwarranted because no substantive question of law has been raised warranting to set aside the findings recorded by the learned Additional District Judge.

In view of the above, the appeal fails and the same is dismissed.

April 4, 2007 **(M.M.KUMAR)**
dkb **Judge**